



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF FEBRUARY 23, 2012**

CALL TO ORDER: Chairperson Bonaccorsi called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Bonaccorsi, Commissioners Chugh, Lorenz, Pentaleri, Quan, Reed, Salwan

ABSENT: None

STAFF PRESENT: Kristie Wheeler, Planning Manager
Kelly Diekmann, Senior Planner
Prasanna Rasiah, Deputy City Attorney
Amy Rakley, Associate Planner
Scott Ruhland, Associate Planner
Steve Kowalski, Associate Planner
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Jay Christiansen, Video Technician

Chairperson Bonaccorsi introduced new Commissioner Ed Pentaleri.

APPROVAL OF MINUTES: None

DISCLOSURES: **Commissioner Reed, Commissioner Chugh** and **Commissioner Lorenz** drove past Item No. 1 site.
Chairperson Bonaccorsi visited the site of Item No. 1.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 3 AND 5.

IT WAS MOVED (CHUGH/SALWAN) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 3 AND 5.

Item 3. **HOUSING ELEMENT ANNUAL REVIEW – Citywide – (PLN2012-00144)** - To consider an annual report on the status of the General Plan and Housing Element Implementation. An annual report is not subject to the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15378, definition of a project.

HOLD PUBLIC HEARING;

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THE ANNUAL REPORT IS NOT SUBJECT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15378(B)(5), DEFINITION OF A "PROJECT";

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THAT THE ANNUAL REPORT OF THE GENERAL PLAN AND HOUSING ELEMENT AND EXHIBIT A ACCURATELY DEPICT THE CURRENT STATUS OF THE CITY OF FREMONT WITH RESPECT TO THE GENERAL PLAN AND HOUSING ELEMENT AND DIRECT STAFF TO SUBMIT REQUIRED MATERIALS TO THE APPROPRIATE AGENCIES.

- Item 5. **DEVELOPMENT POLICY RESCISSION – Citywide – (PLN2012-00149)** - To consider a resolution to rescind various adopted Citywide resolutions and accompanying development policies that are no longer relevant and/or that have been superseded related to design guidelines and standards, water efficiency, circulation improvements, affordable housing bonding, historic resource preservation, quasi-public uses, and park fees; and to consider amendments to the Fremont Municipal Code Title VIII (Planning and Zoning), Chapter 1 (Subdivisions) and Chapter 3 (Street Right of Way Improvement Ordinance) for text reference clean up associated with the subject development policies. This project was considered as part of the Draft and Final Environmental Impact Report (DEIR/FEIR) for the General Plan update. The General Plan EIR was certified by City Council on December 13, 2011.

HOLD PUBLIC HEARING;

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THAT THE PROJECT WAS CONSIDERED AS PART OF THE DRAFT AND FINAL ENVIRONMENTAL IMPACT REPORT (DEIR/FEIR) FOR THE GENERAL PLAN UPDATE;

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THE RESCISSION OF DEVELOPMENT POLICIES AND PROPOSED MUNICIPAL CODE AMENDMENTS ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, COMMUNITY CHARACTER, COMMUNITY PLANS, CONSERVATION AND SAFETY ELEMENTS;

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THE MUNICIPAL CODE AMENDMENTS BECAUSE SUCH

ACTION IS NECESSARY TO ELIMINATE DUPLICATIVE PROCESSES AND PROVIDE CONSISTENT POLICY DIRECTION RESULTING IN MORE EFFICIENT AND EFFECTIVE DEVELOPMENT REVIEW;

AND

RECOMMENDED THAT THE CITY COUNCIL APPROVE THE PROPOSED RESCISSION OF DEVELOPMENT POLICIES AND MUNICIPAL CODE AMENDMENTS AS SHOWN ON EXHIBIT "A" AND EXHIBIT "B."

The motion carried by the following vote:

AYES: 7 – Bonaccorsi, Chugh, Lorenz, Pentaleri, Quan, Reed, Salwan

NOES: 0

ABSTAIN: 0

ABSENT: 0

RECUSE: 0

PUBLIC/ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 1. **DOGFATHER TATTOO STUDIO – 120 J Street – (PLN2012-00130)** - To consider a Conditional Use Permit to allow a tattoo parlor with body-piercing services to occupy a 1,200-square-foot tenant space located in the Niles Community Planning Area. This project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, Existing Facilities.

Associate Planner Kowalski stated that the facility would include four artist workstations, a piercing room, a clean room where sterilized equipment would be stored and, at the front, a consultation room with a cashier's desk and merchandize display counter. This site was located within the Niles Historic Overlay District and tattoo parlors were an allowed use subject to the approval of a Conditional Use Permit (CUP). The Town Center Commercial designation was intended to provide a variety of commercial services in a pedestrian-friendly, main street-type of environment. This project was also subject to the goals and policies of the Niles Community Plan, which encouraged a mix of regional and local-serving businesses in the district's commercial core, which did not currently contain a tattoo parlor. Emails received by staff had been forwarded to the Planning Commission. Four emails were in support of the project, which included one from the Niles Merchants Association, and six emails and a telephone call were in opposition, which included an email from the Niles Main Street Association. A petition of support with approximately 65 signatures had been delivered to staff by the applicant.

Senior Planner Diekmann summarized the findings applicable to this project and must be made to support approval of a CUP, as follows:

- Use must be consistent with the General Plan.
- Site must be suitable and adequate for the use.
- Proposed use and design should not have an adverse affect on vehicular, pedestrian or bicycle traffic or other public facilities or street system.
- Project should not have a substantial adverse economic affect on nearby uses.
- Use must not be detrimental to the general welfare of persons residing in the immediate vicinity, neighborhood or community at large.

Commissioner Lorenz asked how to determine whether the last two findings had been met. Were there residents above a business or residing within the area? Under what circumstances could it be determined that this application could be detrimental to the general welfare of persons residing in the immediate vicinity?

Senior Planner Diekmann replied that, in the past, staff had considered the hours of operation and if it would disrupt the activities of another nearby business. It was not looked at as a competing business or from a competition perspective. Residences were located less than one-half block away on J Street, as could be seen on the location map.

Deputy City Attorney Rasiah added that to deny this project, Commissioners would have to consider if evidence specific to the project, as opposed to a generalized concern about tattoo parlors, would render the inability to make one or more of the above findings.

Bobby Cruze, applicant, introduced his wife, **Christina Cruze**, and stated that he had been raised in Fremont; he and his family had lived in the southwest and the Denver area; and had moved back, specifically to Niles, in 2009. He was a 50-year old father of three with two sons (one of which had recently returned from Afghanistan) and a daughter who attended elementary school in Niles. His wife worked for local law enforcement. He had been tattooing for close to 30 years. He had taught tattoo art in a Denver school and had been hired by the Denver Health Department to help to set up their inspection process in northern Colorado. He understood some of the neighbors' concerns. He always followed all health code regulations, which were very clear. The days of people fighting, etc., in front of tattoo shops were over.

His establishment would look like other antique stores in the area. It would be decorated in a 1920s, movie theater style. He loved the movie The Godfather, hence, the name Dogfather. It had been designed to fit into the community and history of Niles. A sign would state, "No One Under the Age of 18 Allowed." Antique furniture and art with a burgundy carpet and a Tiffany cash register from 1924 would be seen in the front entry of the shop. There would be no tattoo flash designs and no benches in the front of the building, which should discourage loitering.

Four private stations would be available for customers, which could not be seen into from the front of the shop. A waiting area would be available in the rear. Health code rules did not allow anyone to be in the booths other than the customer and the tattoo artist. People with children would not go past the reception desk. The people he generally served were nurses, police officers, business people.

Christina Cruze, applicant's spouse, stated that Niles had been chosen as a place where they wished to raise their daughter. She had taught for ten years prior to joining a local law enforcement agency. Some emails had expressed concern regarding teenage daughters getting tattoos. Valid identification would be required, because the tattoo providers were not interested in jeopardizing their livelihood by tattooing an underage teenager. Tattoo shops were not what they had been in the past. It was now about art. The shop would close at 9:00 p.m., Tuesday through Thursday and 10:00 p.m. on Friday and Saturday with the shop closed on Sunday and Monday. No more than five customers would be in the shop at a time. She expected the nearby businesses would benefit from their shop, as a customer who had undergone four hours of tattooing would be hungry. A friend who was waiting for someone having body art performed would be expected to walk around the business district and spend money.

Commissioner Lorenz asked the following:

- Had the applicant had been practicing his art in the area since they had moved back to Fremont in 2009?
Mr. Cruze replied that he had worked in northern Colorado. It had taken longer than anticipated to open up his business here.
- What were "flash designs hung on the wall?"
The stereotypical tattoo shop displayed tattoo designs on the walls. Some of the sailor/jail house tattoos of the past might be deemed offensive, which he did not specialize in. His work was fine art.
- What was ATP certified?
The Alliance for Professional Tattoo Artists provided national certification above and beyond state and local licensing.
- How did he expect to prevent loitering and the collecting of individuals in front of the studio?
A break area would be available at the rear of the shop on Iron Horse Lane with a table with umbrella and chairs that could be used for smokers or anyone else waiting for a customer.
Ms. Cruze added that it was actually a back patio area. A waiting room would be available and the rear area would be used for brief periods of time.

Chairperson Salwan asked what kinds of licenses or permits were needed for this type of business. Was he required to obtain a license from the State of California? What kind of precautions would be taken to prevent anyone under the age of 18 from getting a tattoo?

Mr. Cruze said that this approval was one permit, along with the usual business license and controlled waste management license with Alameda County, which involved needle disposal and oversight concerning health codes, such as the artists having Hepatitis B shots. He would use the same service as was used by the hospitals with regard to used needles. Other waste would be put into biohazard bags and disposed of appropriately. No license was required from the State. The first precaution would be the sign on the door that stated that no one under the age of 18 would be allowed without a parent. A consent form stated that no one under the age of 18 would be tattooed with or without consent from a parent. Identification would be copied onto the consent form.

Commissioner Chugh asked what the negative connotations were for tattoo art. Was a license for tattoo artists equal to what cosmetologists were required to obtain from the Department of Consumer Affairs?

Mr. Cruze stated that, historically, tattoos and their establishments had been associated with drunken sailors or military people, convicts, gang-associated people and outlaws of many types, people on the fringe of the population. Starting about 20 years ago, tattoos became more acceptable when people starting to want tattoos of flowers and butterflies and not so many skulls. He did more praying hands, flowers and butterflies than skulls, any more. He certainly continued to tattoo bikers and people who frequented bars. However, he refused to tattoo anyone who was under the influence or who was underage. No, a license from the Department of Consumer Affairs was not required. Cosmetologists worked primarily with the face. He refused to do face tattoos. He had apprenticed for three years before actually getting into the field and one of his apprentices was in attendance tonight.

Vice Chairperson Quan asked how many people would he employ in his shop.

Mr. Cruze expected to have five employees, which included his niece as a piercer, a front person and three artists and himself.

Commissioner Pentaleri asked about the planned signage. Would there be something hanging over the doorway?

Mr. Cruze said that signage would include "Open" and "Closed", business hours and his logo painted on the window, but it depended upon what was allowed. No, nothing on the street.

Chairperson Bonaccorsi opened the Public Hearing.

Tino Panna, Niles resident since 1978, stated that he had attended Kennedy High School and about four years ago he had opened Joe's Corner, but it was now closed down. He's known the applicant and his family for about one year and their daughters were friends. He operated a men's home through Victory Outreach and those men

would help with painting the applicant's shop. He would like to see this business in the Niles District.

Commissioner Lorenz asked if he would have had any reservations with this business if he was still operating Joe's Corner.

Mr. Panna said that he would have no problem, at all. There were other Niles community people in attendance who all strongly supported each other.

Rae Steckler, Iron Dog Antiques co-owner, said that she had had the good fortune to get to know the applicant and to see his artwork first hand. She thought of the applicant as one of the local artists, a neighbor whose vision for his shop sounded beautiful. He had gathered antiques from the dealers in town to use in his shop, which carried on the theater and antiquities history that the town was known for. It was a feat in itself to have conducted a business for 30 years and to have developed a following. His hours would be reasonable. She used to live around the corner from the shop's location. However, the local bar might be the problem rather than his shop.

Chairperson Bonaccorsi asked the next speakers to try to speak to the five findings that must be made, as mentioned earlier.

Gael Filgate, S & H Antiques, supported this new business, which was needed in town and would enhance the personality and history of Niles. This shop would be located adjacent to the building in which her business was located. She and her family had the utmost confidence in the applicant's professionalism, dedication and integrity. She read a 1982 State Proclamation that stated, "The tattoo is a primal parent of the visual art. It has reemerged as a fine art attracting highly trained and skilled practitioners," such as the applicant.

Chairperson Bonaccorsi asked why she was not worried about loitering near this business.

Ms. Filgate said that she did not believe it would be an issue with this high-quality business run by a family man. It would not be tolerated by anyone in the applicant's family or by her.

Lorna Jaynes, Niles resident just around the corner, stated that "tattoos are not her cup of tea." However, she liked looking at other people's tattoos. This business would be an enlivening and whimsical and quirky and fun addition to Niles. People hanging around could be construed as loitering and bad or just people hanging around socializing, chatting and having a good time, which is what Niles was all about.

Bruce Cates, resident just around the corner, stated that he owned a piece of property that was adjacent to the rear patio area that was mentioned. Because his property had been vacant for the 15 years that he had owned it, he had decided to use it for a community garden group called LEAF, which encouraged children to plant gardens. The Girl Scouts group had a section across the alley from the applicant's building. Consequently, he was opposed to smoking there. As an artist, he believed that artists

should not need a license. He was in favor of this application, because it would bring an interest to the town. A good community policed its own and that would happen here.

Commissioner Lorenz asked if a fence separated his lot from the alley. He asked that smoking in this area be addressed later by the Commission.

Mr. Cates answered that a cyclone fence was there, along with a lath house with plants that provided a visual diffusion. Next year he hoped to move the gardens to the Nursery.

Theresa DeAnda, Esssanay Café former owner, stated that she lived in Niles. She was one person who was not in favor of this application, because she had a young daughter who was familiar with everyone in Niles. She was opposed to the location chosen for this shop. She understood that 18 years old was the law, but everyone knew that young people were easily able to obtain false licenses. Her daughter had a tattoo when she was 14 and was now in the process of having it removed, which was not a pleasant experience. She loved the applicant's plan for his business, but she feared flashing tattoo signs and people with tattoos befriending young people who might think a tattoo was cool. She and her husband had invested hundreds of thousands of dollars into the café and into Niles to bring the town up. They were involved in many of the local associations and the event committees. She felt that the 1,000-foot notification had not been large enough. She had heard of this application through a friend. She suggested that approval be delayed, so she could gather 1,000 signatures for a petition from like-minded people.

Commissioner Pentaleri asked if she would like to add conditions that could mitigate her concerns.

Ms. DeAnda said that she and many other Niles residents had not been notified early enough to allow them time to plan for this hearing.

Commissioner Lorenz asked that staff address the notification process later. He asked the following:

- Was her concern that underage children who resided in the area might produce false identification in order to get a tattoo?
Yes, that was one concern.
- Could she elaborate on the finding that this business could be a detriment, as stated earlier in the findings?
She knew many other parents and young adults who had had the same experience she had with her daughter where tattoos were obtained by children who were under the age of 18. This business could be a negative element, judging from past experience.

Conditions that would make her happy would be the no flashing tattoo sign and closing hours no later than 8:00 or 9:00 p.m. when events were held in the streets.

Chairperson Bonaccorsi called a recess for the stenocaptioner at 8:05 p.m.

Chairperson Bonaccorsi called the hearing back to order at 8:15 p.m.

Melissa Lynch, S & H Antiques co-owner, assured everyone that there would be no blinking neon signs. She also promised to work with Mr. Cates concerning the smoking issue. No loitering was a part of the lease agreement. Their business was right next door and she was the owner of the building being leased to the applicant. This would be an upscale parlor with, again, no neon signs. They would never bring in a business that would negatively affect any other of the local businesses, let alone their own business next door that had been started by her mother 40 years ago.

The Commission asked the following:

- **Commissioner Lorenz** asked if she had a signed lease agreement with the applicant. Does the lease agreement address neon?
Yes. The lease addressed signage that must be approved by the city. However, she would not approve neon signage. They had just painted their building and they wanted keep the upscale look. "No cheesy stuff."
- **Chairperson Bonaccorsi** asked about some of the prior uses at this location.
The fire department had used it for union hall meetings for many years until they got their new firehouse. The quilt shop was originally located there, but it had been relocated to the main street; a clothes consignment shop and even earlier it had housed a laundry mat.
- **Commissioner Chugh** asked if the lease had any language that would allow the lease to be terminated if this business turned out to be something other than what was expected.
Yes, always.

Kaleo Ferreira, The Armoire Closet, stated that his business was new, about nine months. The community was very tight knit, but everyone had welcomed him with open arms, which he found incredible. He had walked door-to-door to introduce himself and everyone had visited his shop. The applicant and his family were also very welcoming and encouraging. Although he had no tattoos, he saw it as a fine art form. He supported this application and he believed this facility would bring more business into his shop, as well as others on his side of the block.

Commissioner Lorenz asked what his business consisted of.

Mr. Ferreira replied that his business had started as a consignment shop, but the concept had changed with the addition of collectibles and vintage art and clothing that he had been collecting over the years. The applicant's passion would complement the area.

Rena Kiehn, Niles resident since 1999, stated that she had worked with young people for the last 25 years where a complete shift had taken place. She probably would have had a different opinion of a tattoo parlor 15 years ago, but now many of her best staff

were tattooed and it was overwhelming. She was shocked that she “was okay with this.” Evidently, two out of five 18 to 34 year olds have tattoos. While chatting with the applicant, she discovered that he also performed tattoo removal, which was helpful to know that it was something he supported. He and his staff would review identification, but liquor stores also had that underage problem. Hopefully, modern identification was more difficult to forge and easier to confirm. She thought that resistance to neon signs was interesting, because flashing “Open” neon signs were all over the business district and they could be purchased at Costco. Tattoos cost a lot of money, hundreds of dollars. Many tattoos must be done over a period of time with the customer going back multiple times – “and I hear it hurts like sin.” The applicant had assured her that he did not tattoo faces and he refused to do any pride or power designs, anything that could be considered negative.

Chairperson Bonaccorsi asked how she knew his business model so well.

Ms. Kiehn said that she had had a conversation with him this afternoon.

Frank Williamson, 30-year business owner in Niles, noted that 30 years ago no less than ten bars were in business in Niles; today there were two. A champion for Niles, Alan Hayman, had been lost and the community had become splintered. He and his wife had worked, along with other businesses, had worked hard to make Niles a family-friendly community, with family entertainment in the plaza, the train, the events held in town and the fine new restaurants. He feared regression with the old connotations of a tattoo parlor in mind. He questioned the plan for policing the children who might want piercings and tattoos. Judging by the questions asked by the Commissioners, he was uncertain about their knowledge concerning all the laws with regard to tattoo parlors. He was opposed to this application.

Commissioner Pentaleri asked the following questions:

- Did he feel that the proposed use would be detrimental to the general welfare of the persons residing in the immediate vicinity?
He was mainly concerned about the opinions of visitors with children and how it would affect his business and the flow of traffic through town.
- Were there any conditions that could be applied that would mitigate his concerns or was his opinion intrinsic to the type of business, itself?
He no longer lived there. It sounded like this business would be approved and it would either fail or succeed on its own merits. Any future problems associated with this business would probably be handled by the police department or by this tight-knit community.
- Since he had a business in the area, had he received a notice?
Yes, he had heard about it just a few days ago through the Yahoo group.
- What was the distance from his business to the applicant’s location?
His business was located at the intersection of H and Niles Boulevard, about two blocks to the west.
- Had he received a notice from the city regarding this agenda item?
Yes, just recently within the last few days.

Nadia Khalik, Dogfather Tattoo, addressed each finding that the Commissioners must make: The proposed use was consistent with the General Plan; parking was plentiful along Niles and J Street, so the no more than five clients at a time would affect parking; it have no substantial adverse affect on vehicular or pedestrian circulation or negatively affect the various businesses in the area, as well; and this studio would bring in more business to the area, because the clients would have time on their hands and would walk around the business district. If they were interested in tattoos, they would be interested in other types of art and antiques. Many of the people she knew who were tattooed were family oriented and she did not expect to see convicts and sailors, as in the past, coming into this establishment. While working at a coffee shop, she had seen people who were nurses, doctors, lawyers with tattoos. Security would be provided by cameras in the shop.

Chairperson Bonaccorsi complimented the speaker for speaking specifically to the findings. Was she a prospective employee?

Ms. Khalik stated that she was the applicant's apprentice.

Carrie Pitta, 24-year Niles resident and future business Niles owner, stated that she, initially, had been totally opposed to this application. However, after listening to the applicant, she was a little more impressed at his style and how he planned to run his business. She and her husband planned to sign a lease for 110 J Street, right across the alley from this shop. It would be a consignment baby boutique with mothers and young children coming into her business. The past history of tattoo parlors was not good. Although it could bring business to the town, it could work the other way, as well. Potential business owners who hear that a tattoo parlor was operating in Niles might choose not to locate there. With her years of experience in the hospital industry, she would prefer to know that the needles would be picked up more often than once a month. That was a worry when considering the mothers with young children who would be her customers.

Commissioner Pentaleri asked what she considered a practical timeframe for needle pick up. Could she suggest any other conditions that would mitigate her concerns?

Ms. Pitta also noted that she had not received any notice, although she lived just two streets away, so she had had little time to think about how this business would affect her and the community. The deli on the corner would also bring families to this area, which was another reason why this business was not a good idea for the community. No, she had no suggestions.

Ms. Cruze closed with the following comments:

- Underage youth – It was the responsibility of the child and his/her parents for a forged identification. The studio employees would do everything they could when it came to identification. If the person looked underage, they would be asked to present a valid California identification. Student identification would not be accepted.

- Notice of this meeting had been sent to everyone within 300 feet of the site of their establishment, along with being posted on the Niles Group. A few months ago, they had made a presentation to the Niles Merchant Association. Every merchant had been invited to that meeting. If some had chosen not to attend, they could not be held responsible for those merchants' lack of knowledge about this business. She did not understand how someone had received notice just a couple of days ago, when they had received notice three weeks in a row.
- Some speakers had equated their shop to a bar. There was nothing similar to a bar, except for the age limit. There would be no substance use by the artists or anyone in the shop. If someone came in while under the influence, they would be asked to leave.
- Comments made about young children being nearby and the danger of used needles was baseless. The needles would not be accessible to anyone.

Mr. Cruze's comments were:

- Because of the amount of needles that a hospital used, they were picked up weekly or even twice a week, which would be unnecessary in his establishment. The needles would not be "lying around." The locked sharp container would be attached to the wall, as could be seen in any hospital examination room. It stayed on the wall until it was picked up by the service once a month. Extra containers stored in a locked cabinet would be available. The full locked container would be taken off the wall, put into a plastic biohazard bag, placed into a cardboard box and then placed into a locked cabinet inside the shop. It would never be outside the premises where anyone, including small children, could access it.
- The Police Department had signed off on this application with the condition that a camera be installed over the front door and the cash register. He also planned to install fire alarms, and two other cameras.
- No flashing signs, just a window logo.

Questions from the Commissioners were:

- **Commissioner Lorenz** asked how he planned to verify the authenticity of identification.
Mr. Cruze said that their experience was the same as any other shop owner had who might sell tobacco, for example. The new California identification now included holographic images and drivers licenses for those under the age of 21 were printed horizontally.
- Who would be verifying these IDs?
All of the employees.
- Would procedures be in place to train everyone what to look for?
Merchants could obtain a photo from the Police Department that showed what these IDs should look like. He was willing to provide whatever training was necessary. He was not an expert in forgery; he was an expert in tattoos. He suggested that a law enforcement officer could do the staff training.

- Closing time at 10:00 p.m. two days a week had been noted by one speaker as a concern. What were his thoughts?
Most businesses, such as Bronco Billy's, were open until 10:00, except for the antique shops.
- How would the cameras be monitored?
Ms. Cruze stated that they would provide a permanent digital record and would allow a replay at any time.
- Would it be available through the internet?
No, it would be privately kept. Law enforcement could look outside, as well as inside the building.
Associate Planner Kowalski added that the Police Department had required the same type of camera setups in the recently approved smoke shops. A camera would be outside the front door and one would be trained at the cash register with a monitor right behind the cash register that could be seen by the customer.
- **Vice Chairperson Quan** asked what the charge was for a tattoo. How long did it take for a tattoo?
Mr. Cruze charged \$150.00 per hour. A four-by-four inch picture of a lily with multiple colors would take about one and one-half hours. Larger pieces took seven to eight hours. Not many 16-year olds could afford it.
- **Commissioner Reed** said that the quality of the applicant's character was loud and clear. What about the smoking near the Girl Scouts' garden?
Mr. Cruze replied that now he was aware of the Girl Scouts, he might post "No Smoking" signs on both the front and rear of the building and direct smokers to go across the street to the parking lot.

Chairperson Bonaccorsi closed the Public Hearing.

Chairperson Bonaccorsi noted the comment made regarding how the Commissioners were a little naïve and did not understand the laws regulating the practice of tattoo operation. The seventh condition listed under the Fremont Municipal Code in the staff report stated, "... requires that the project would comply with the provisions of Article 27 of the Zoning Ordinance, site plan with architectural approval in that the applicant will be required to obtain building permits, including review by the Planning and Building Divisions for all modifications and improvements that might be required by the Alameda County and State health departments, to allow the tenant space to be used for tattooing and body piercing." He asked staff to address the concerns that went beyond what the Planning Commission's role was with regard to the issuance of a CUP. Other agencies in other jurisdictions were also involved.

Associate Planner Kowalski replied that the applicant would be required to obtain a building permit for the interior improvements. As the applicant mentioned, he would be subject to county environmental health laws, which would be outside the city's jurisdiction.

Chairperson Bonaccorsi asked, for example, if the needles were not picked up often enough, would that become a health issue and he could be put out of business.

Associate Planner Kowalski agreed. However, it would be within the county's jurisdiction.

Planning Manager Wheeler pointed out Condition of Approval No. 14, which required that "the applicant shall comply at all times with all applicable Alameda County Department of Environmental Health and California State Department of Health Services' requirements governing tattoo and body piercing. Any violation of said requirements may be deemed grounds for revocation of this Conditional Use Permit."

Chairperson Bonaccorsi asked what the significance was of having that as Condition No. 14 in the CUP from the city's perspective.

Planning Manager Wheeler replied that the city would then have grounds for revoking the CUP and he could not continue to pursue his business.

Commissioner Reed motioned, with **Commissioner Pentaleri** second, for staff recommendation. **Commissioner Salwan** asked if there was interest by other Commissioners for an earlier closing time, such as 8:00 p.m.

Commissioner Salwan suggested adding a condition requiring "No Smoking" signs in the front and rear of the building. Another could be no neon signs.

Deputy City Attorney Rasiah stated that the business would already have to comply with city ordinance, of which one was no smoking. A State law also prohibited smoking in places of employment. Concerning smoking, along with signage, they would have to comply with existing law. Specific conditions stating that would not have to be added.

Senior Planner Diekmann added that signage display could not be added to a CUP, because it was not within the purview of the Planning Commission. The applicant would have to comply with the city's separate sign ordinance. Niles had design guideline requirements, which was beyond CUP requirements.

Chairperson Bonaccorsi noted that there seemed to be no interest in changing the closing hours.

Planning Manager Wheeler asked staff to explain the noticing that had been done.

Associate Planner Kowalski stated that state law required minimum noticing of 300 feet to all property owners and occupants. As a courtesy, the city had sent notices to those within 1,000 feet of the applicant's location, which was significantly more than was required by law. Approximately 50 notices were sent to people on Third Street. Perhaps the speaker who lived on Third Street fell outside the 1,000-foot radius.

Commissioner Lorenz appreciated the statement made by one of the speakers that “Niles was founded on an artistic vision.” If the conditions were not met, the CUP could be revoked after the appropriate hearings. He had not heard evidence of a substantial, adverse economic affect nor of a detrimental affect to persons residing in the vicinity, so he would support the motion.

IT WAS MOVED (REED/PENTALERI) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THE PLANNING COMMISSION – FOUND THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER GUIDELINES SECTION 15301, EXISTING STRUCTURES;

AND

FOUND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE LAND USE CHAPTER AND THE NILES COMMUNITY PLAN ELEMENT OF THE GENERAL PLAN AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVED CONDITIONAL USE PERMIT PLN2012-00130 AS SHOWN IN EXHIBIT “A”, BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS CONTAINED IN EXHIBIT “B”.

The motion carried by the following vote:

AYES: 7 – Bonaccorsi, Chugh, Lorenz, Pentaleri, Quan, Reed, Salwan
NOES: 0
ABSTAIN: 0
ABSENT: 0
RECUSE: 0

Chairperson Bonaccorsi gave the appeal information, which included the need to file within ten days of the Planning Commission’s decision.

Chairperson Bonaccorsi called a recess for the stenocaptioner at 9:10 p.m.

Chairperson Bonaccorsi reconvened the meeting at 9:20 p.m.

- Item 2. **LARGE FAMILY DAYCARE – Citywide – (PLN2011-00104)** - To consider a Zoning Text Amendment (ZTA) to multiple sections of Fremont Municipal Code Title VIII (Planning and Zoning), Chapter 2 (Zoning) deleting Section 8-22147.5 (Large family day care homes) and associated ZA Permit requirements and establishing large family day care homes as accessory permitted uses in all residentially-zoned districts Citywide. The proposed ZTA is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section

15061(b)(3), since it does not have the potential for causing a significant effect on the environment.

Commissioner Lorenz asked if any notification would be made to neighbors that a large family daycare was coming to their neighborhood.

Associate Planner Rakley answered, “No.”

Commissioner Pentaleri originally understood that this item concerned group homes, of which had had personal experience. However, he was fully supportive to the idea of streamlining the planning process and to reducing costs related to a review that seemed to have provided little or no observable benefit. Balance would be non-discretionary review with minimum concentration standards.

Associate Planner Rakley added that children Large Family Daycare was defined as ages ten and under, according to state law.

Planning Manager Wheeler clarified that direction received from City Council was to proceed with the text amendment that was now before the Commission.

Commissioner Pentaleri presumed that this item had been returned to the Commission because it had the discretion to recommend approval, or not, of this zoning text amendment (ZTA). In his opinion, the Second Alternative, a nondiscretionary permit that would be subject to four sets of criteria, should be recommended, because one of the criteria concerned the adjacency or spacing of such facilities, which would give a better balance to the neighborhood.

Commissioner Chugh summarized **Commissioner Pentaleri**'s preference as Alternative 2, because it provided a chance to address the issues of parking, traffic, noise and spacing of concentrations of home with similar facilities, since these were the primary issues brought up in the past.

Chairperson Bonaccorsi (asked if their conversation referred to page 2 of 5), which required a nondiscretionary permit with no hearing. They both agreed. The Planning Commission previously had recommended the status quo, which was also authorized by State law. Council had recommended that large family daycare homes be allowed by right.

A dialogue between **Commissioner Chugh** and **Commissioner Pentaleri** occurred where the main issues were:

- **Commissioner Chugh** wondered if a daycare center was located eight homes away, would that preclude another one from being opened?
Commissioner Pentaleri agreed yes, if in prescribed radius.
- **Commissioner Pentaleri** felt that two of these facilities right next door to each other could become an unreasonable burden for the neighborhood, which was

why some kind of reasonable distance between facilities needed to be established. If an application were for a facility that was located greater than the reasonable distance, it was eligible for a nondiscretionary permit.

- **Associate Planner Rakley** explained that a large family daycare home operated out of the operator's place of primary residence, by definition.
- **Commissioner Chugh** could see that as another bureaucratic regulation.
- **Commissioner Pentaleri** did not see it as bureaucratic, because the City had permitted these uses in the past only as CUPs. A nondiscretionary permit would be much less bureaucratic in comparison. The existing facility's locations were known and they would be grandfathered. New applications would be reviewed at the counter."
- **Commissioner Chugh** asked how much distance was he proposing.
- **Commissioner Pentaleri** felt that would depend upon traffic, etc. Within a three or four block radius.

Senior Planner Diekmann stated that a 300-foot evaluation distance existed at this time and a 100 foot notice distance allowed.

A recommendation for Alternative 2 would be a reason for rejecting the ZTA and the city, as the applicant, would appeal to the Council, which had already directed staff to write Alternative 1 as the ZTA. Acknowledge that a rhetorical statement about Planning Commissioners previous opinion could be made, but the Commissioner's discretion was limited.

Commissioner Pentaleri read, "Pursuant to the Planning Commission is charged with determining whether the proposed ZTA is in general conformance with the General Plan and that the public necessity, convenience and general welfare required adoption of the Zoning text amendment." Was that correct?

Senior Planner Diekmann stated that the Planning Commission had a role, under statute, to make those findings. If they could not make those findings in the affirmative, there were other ways to get something to the City Council. Alternatively, the Commission could make a recommendation for a different ZTA that would address all or some of the elements that had been presented by staff.

Commissioner Pentaleri contended that consideration could be made for the existing residents of a neighborhood that could also achieve the purpose that staff was trying to achieve in this initiative. He believed that Council would give the Commission's recommendation and rationale due consideration.

Commissioner Salwan stated that the Commission felt that people should be heard and should be allowed a vetting process, which was a different opinion from Council. The Commission had been overruled by the Council, which he respected. He would approve Council's recommendation.

Commissioner Chugh agreed.

Chairperson Bonaccorsi suggested that **Commissioner Pentaleri** make his motion to see if there was a second. If so, it could be used as a framework for further discussion.

Commissioner Pentaleri moved to recommend the Zoning Text Amendment consistent with Alternative 2 with only minimum distance separation of 300 feet.

Commissioner Lorenz considering whether to support the motion as second the motion was uncomfortable with no hearing being available when reflecting on past neighborhood outcry regarding a new daycare. The General Plan was to be an expression of what the community wanted. This ZTA would be short circuiting that process by not allowing any input in the neighborhood. He would like to see some sort of a notification process, similar to what was stated in 3b, which stated, "Must only require public noticing within 100 feet of the proposed location and perhaps that public noticing could include a description of the city's limited regulatory role in these matters."

Deputy City Attorney Rasiah clarified that under state law, the noticing requirement that would be sent to within 100 feet of the proposed facility would only occur under the third option, which was the existing process. Option 1, Permit Use, or Option 2, Nondiscretionary Permit, the state law did not call for noticing under either of those options.

Chairperson Bonaccorsi asked if State law would not allow notification under Option 1 or Option 2.

Deputy City Attorney Rasiah stated that he was correct. Noticing would not be allowed, under State law, for a permitted use.

Commissioner Pentaleri suggested that Option 2 allowed for a nondiscretionary permit to be subject to conditions allowed under state law. Otherwise, the Planning Commission would not be representing the community, as is.

Chairperson Bonaccorsi agreed that Option 3 was the best option. However, that was not before the Commission. He asked for a second to the original motion, below, for Option 2.

Chairperson Bonaccorsi asked, as Chairperson, if he was prohibited from seconding a motion,

Deputy City Attorney Rasiah stated that he could second the motion.

Chairperson Bonaccorsi seconded the motion in order to move the discussion along.

IT WAS MOVED (PENTALERI/BONACCORSI) THAT THE PLANNING COMMISSION – RECOMMEND ZTA CONSISTENT WITH ALTERNATIVE NO. 2 WITH THE REQUIREMENT THAT A MINIMUM DISTANCE, NO LESS

THAN A 300-FOOT RADIUS SEPARATE A NEW FACILITY FROM EXISTING HOMES.

Commissioner Pentaleri commented that the City Council clearly had not embraced the Planning Commission's recommendation for Alternative No. 3. They had directed a ZTA based upon Alternative No. 1. He believed that the Commission could still offer the third Alternative with a cogent rationale and the Council would take it under fair consideration.

Commissioner Chugh asked if the proposal was that a noticing requirement would be inserted into either Alternative 1 or 2, although one was not required.

Chairperson Bonaccorsi stated that a noticing condition would be inconsistent with State statute regarding Alternative 2, as explained by **Deputy City Attorney Rasiah**. However, it was felt that some level of noticing should be allowed to prevent cannibalizing daycare centers that could be located next to each other. He asked what the significance was between Option 1 and Option 2.

Senior Planner Diekmann asked for time for staff to discuss his question.

Senior Planner Diekmann stated that Option 1 required a business license and compliance with the Fire Code and State licensing requirements. No planner would review the proposal. Option 2 would have to create an objective, black and white, yes or no standard. It would be an administrative permit (no longer a ZA permit) where the applicant showed that the daycare would not be within "X" feet of another daycare facility, parking, yard space, etc., would have to be defined in black and white. There would be no leeway to say, "Yes" with conditions.

Chairperson Bonaccorsi asked if some neighbor felt he was being harmed by that decision, could he challenge the approval through a judicial review process.

Deputy City Attorney Rasiah explained that if specified standards were approved, such as with a building permit, then someone could appeal, but only after the final administrative decision. In the end, neither option was comparable with the existing process.

Senior Planner Diekmann reminded the Commission that one of the main reasons for this change was to remove the appeal process, because of the burden of the cost associated with the multiple levels of appeals currently available.

Commissioner Pentaleri pointed out that if the permit became nondiscretionary and subject to objective standards, it would be a vastly reduced administrative burden. It would achieve the purpose of allowing the city to address a potential legitimate concern of the neighborhood.

Planning Manager Wheeler added that there would not be an administrative remedy. If the permit were denied, there would be no way for the applicant to appeal.

Associate Planner Rakley commented that before a provider was allowed to operate a large family daycare home, they must be operating a small daycare home, which was allowed by right and could be next door to another daycare home.

Commissioner Chugh asked for a clarification on the motion.

Senior Planner Diekmann replied that the motion on the table was for Option B with a 300-foot separation standard.

Chairperson Bonaccorsi said that if a daycare was a matter of right, it did not have to be 300 feet apart. If it was a permit, it must be at least 300 feet apart. There would be no appeal process or if improvidently granted in violation of city code, no public hearing. But in a very small symbolic way, it would take something that would be an accessory use, as a matter of right, and make it have some level of conditions that had to be met, which would have some influence over addressing the possibility of serial large daycare homes. Although they were to be owner-occupied, there would certainly be ways to get around that. The possibility of the City Council insisting on Option 1 should not silence the Commission's views on this point. This motion might be some compromise that the Council had not previously considered, which might prompt them to reconsider at least moving incrementally in this direction.

Commissioner Chugh asked if an appeal would be allowed.

Senior Planner Diekmann said that, as the motion had been stated, there would be no ability to appeal.

Commissioner Bonaccorsi rescinds options of Planning Commissioners to recommend to City Council and merits of different recommendations in this process. **Commissioner Chugh** could see Council overruling the Commission, again, with the same discussion occurring among the Commission, again. Was the intent to have this issue go back and forth as many times as it would take?

Commissioner Pentaleri said that if Council sent Option 1 back to the Commission, then there would be no point in discussing it further.

Planning Manager Wheeler stated that if the Commission decided to recommend Option 2, staff would move forward with Option 1, but with the Commission's recommendation to give staff direction regarding amendments to the zoning code that would address Option 2. If Council directed staff to prepare an amendment for Option 2, it might not come back to the Commission.

IT WAS MOVED (PENTALERI/BONACCORSI) AND FAILED (3-4-0-0-0) THAT THE PLANNING COMMISSION – RECOMMEND ZTA CONSISTENT WITH ALTERNATIVE NO. 2 WITH THE REQUIREMENT THAT A MINIMUM DISTANCE, NO LESS THAN A 300-FOOT RADIUS SEPARATE A NEW FACILITY FROM EXISTING LARGE FAMILY DAYCARES.

The motion failed by the following vote:

AYES: 3 – Bonaccorsi, Quan, Pentaleri
NOES: 4 – Chugh, Lorenz, Reed, Salwan
ABSTAIN: 0
ABSENT: 0
RECUSE: 0

Commissioner Lorenz asked if the city had ever created a “Courtesy Policy” of notifying a neighborhood of the establishment of a large family daycare that explained the city’s limited regulatory role in the spirit of communication of how options were limited in these instances. Was there a means to do this? If so, it would save the city from the push-back from a neighborhood, once it experienced the traffic, etc., from the surprise of a large family daycare. The city would still have a burden associated with answering those calls. Some of the most challenging issues during his time spent on this Commission were caused by large family daycare facilities. He could not support Option 1 without some kind of noticing mechanism.

Deputy City Attorney Rasiah stated that, according to State law, if Option 1 were pursued, it was a permitted use and no noticing would be associated with it.

Commissioner Chugh asked if there was not something that would go above and beyond the good neighbor test. If notice was sent, anyway, would anyone get in trouble?

Senior Planner Diekmann believed their hands were tied regarding creating a notice process concerning daycare facilities.

Deputy City Attorney Rasiah reiterated that the city was bound by State law.

Chairperson Bonaccorsi stated that the broader philosophical issue that the Council had not addressed was to what extent could the State dictate to local municipalities how to zone. It had happened on the federal level with cellular towers. The only thing that could be done would be to vote “No” on this motion and recommend Option 3, which would be rejected by Council and the Commission would then have to vote in whatever zoning text amendment that Council wanted.

Planning Manager Wheeler reminded the Commission that a motion was still on the floor.

IT WAS MOVED (SALWAN/REED) AND CARRIED BY THE FOLLOWING VOTE (4-3-0-0) THE PLANNING COMMISSION – RECOMMENDED THE CITY COUNCIL FIND THAT THE PROJECT IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3) BECAUSE THE PROPOSED MODIFICATIONS TO THE EXISTING PERMITTING PROCESS FOR LARGE FAMILY DAY CARE HOMES DOES NOT HAVE THE POTENTIAL TO CREATE A SIGNIFICANT ENVIRONMENTAL IMPACT;

AND

FOUND THE ZONING TEXT AMENDMENT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S PUBLIC FACILITIES, LAND USE, AND ECONOMIC DEVELOPMENT CHAPTERS AS DISCUSSED IN THE STAFF REPORT;

AND

RECOMMENDED THAT CITY COUNCIL FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT BECAUSE IT SUPPORTS THE PROVISION OF LARGE FAMILY DAY CARE HOMES IN RESIDENTIALLY-ZONED DISTRICTS CITYWIDE, THEREBY ADVANCING BOTH THE STATE LEGISLATURE'S INTENT TO SUPPORT PROVISION OF THESE FACILITIES AND THE CITY OF FREMONT'S SUPPORT OF THAT LEGISLATIVE INTENT THROUGH THE GENERAL PLAN POLICIES DESCRIBED HEREIN WHILE MAINTAINING COMPLIANCE WITH STATE LAW PERTAINING TO LARGE FAMILY DAY CARE HOMES;

AND

RECOMMENDED THAT THE CITY COUNCIL APPROVE THE PROPOSED ZONING TEXT AMENDMENT (PLN2011-00146).

The motion carried by the following vote:

AYES: 4 – Chugh, Quan, Reed, Salwan
NOES: 3 – Bonaccorsi, Lorenz, Pentaleri
ABSTAIN: 0
ABSENT: 0
RECUSE: 0

Chairperson Bonaccorsi called a recess for the stenocaptioner at 10:14 p.m.

Chairperson Bonaccorsi called the meeting back to order at 10:22 p.m.

Item 4. **RENEWABLE ENERGY ORDINANCE – Citywide – (PLN2012-00145)** - To consider a Zoning Text Amendment (ZTA) to the Fremont Municipal Code Title VIII (Planning and Zoning), Chapter 2 (Zoning) deleting Section 8-22165 Wind energy

conservation systems and adding a new article entitled Renewable Energy that sets standards for solar energy, small wind energy, and wind energy systems for all zoning districts Citywide. A Negative Declaration was prepared and circulated for this project in accordance with the California Environmental Quality Act (CEQA).

Associate Planner Ruhland displayed information concerning wind energy systems. A matrix showed the uses, Zoning Administrator (ZA) permanent uses and a CUP.

- Roof-mounted and ground-mounted solar panels were all permitted uses, per State law. The City has little or no discretionary authority. Roof-mounted wind turbines were a fairly new technology that staff had received questions about, although none had been installed within the city. In cases where they would be no more than ten feet above the roofline and blade diameter would be five feet or less, which was fairly common, they would be a permitted accessory use. A Zoning Administrator Permit would be necessary for any wind turbines that exceeded the above.
 - The same for commercial and industrial properties.
 - Not allowed on structures in Open Space, except in city parks.
 - All other areas would be permitted by the ZA.
- Ground/Pole-mounted turbines at heights of 60 to 90 feet: Above the toe of the hill would need a CUP. A residential lot would need a ZA permit.
 - Commercial/industrial uses could be a permit use, if the 40-foot height requirement was met.
 - Outside of those parameters, it would be a ZA permit.
 - Not allowed in Open Space, except in city parks.
 - All other areas would be permitted by the ZA.

Commissioner Lorenz asked why residential roof-mounted and ground-mounted wind turbines would have different permitted uses.

Associate Planner Ruhland replied that neighbors should be noticed about a 60-foot wind turbine in an adjacent yard. A roof-mount was more like a roof accessory, similar to a satellite dish, or other utility appurtenance.

He displayed solar energy photos, such as, the courthouse parking lot, Solaria industrial business on Paseo Padre Parkway, and common roof-mounted solar panels. The city averaged about 50 permits per year.

Photos were shown on the variety of wind turbines that could occur in the city. For residential lots, rear yard locations would be permitted. Side, rear front for commercial and industrial parcels would be permitted. Separation requirements would be based on turbine diameters, which were five to ten feet for roof-mounted. Ground-mounted turbines were 12 feet to 25 feet diameter. Maximum height, based on manufacturers' specifications correlated to lot size, would be 60 feet with allowances up to 90 feet for lots above one acre in size. Height would be defined as to the top of the blade. May have to be revised, since some tower heights were 60 feet.

Maximum blade diameter would be 10 feet for roof-mount and 25 feet for a ground-mount. Any system that did not meet these standards could still apply for a CUP. No more than two wind turbines, depending on diameter, would be allowed on a residence and a commercial building, assuming the size of the lot and building. Other ordinance provisions included solar demonstration systems for companies who market and manufacture these systems would be allowed as a permitted accessory use. Interior tree requirements would be exempted if a parking lot solar array was planned.

Commercial electricity production from wind and solar farms would require a CUP to be only located in public facility lots or general industrial zone lots that were ten acres or larger and located below the toe of the hill. Emerging technologies would be considered on a case-by-case basis.

Commissioner Lorenz asked if homeowners associations' requirements superseded the city's requirements.

Associate Planner Ruhland said, "No." He noted that an ordinance had been in effect since 1984 and no wind turbines had been installed within the city, so far. A wind turbine information sheet would be created, similar to an existing solar information sheet that was handed out to interested parties.

Chairperson Bonaccorsi had previously proposed using the common areas in HOAs for wind turbines. His questions and comments were:

- Had that been considered in this ordinance?
Associate Planner Ruhland replied that it would not be prevented, if an HOA wanted to use a wind turbine on a common area parcel to power a community building, for example. However, if someone wanted to use a common area parcel to power their own home, then HOA approval would have to be given.
- Could an HOA apply for a CUP to install a wind turbine in the common area that would serve all of the homeowners?
That might be looked at as a ground-mount on a residential lot, which would be permitted by the ZA.
Deputy City Attorney Rasiah added that the parcel and how it was designated, rather than if it was an HOA, would be considered.
- He argued that policies should be in place to spur shared use of alternative energy, as opposed to the regulatory perspective.
Senior Planner Diekmann believed that allowing a wind turbine in the common area of a development would be too broad, because useable Open Space was required for these multifamily zones and it would still have to be useable to the residents.
- A discussion ensued among **Chairperson Bonaccorsi**, **Associate Planner Ruhland** and **Senior Planner Diekmann** concerning how "open space" could be used.

Commissioner Pentaleri had the following comments and questions:

- Had staff contacted other communities that had successful, renewable energy ordinances with a wind energy component?
Associate Planner Ruhland said that the most recent was the City of Sunnyvale and they had not issued any permits under that ordinance. The average wind speed in Fremont was eight to nine miles per hour (mph).
Senior Planner Diekmann added, as a Sunnyvale resident, that not much wind went through the residential neighborhoods. There may be a little more exposure in the City of Fremont.
- Some years ago, he became very interested in wind power and had educated himself about it. While investigating the proposed ordinance he believed that with the low wind potential in Fremont, this would not be a viable option. He believed that there was a disconnect between the entitlement, the technology and the economic feasibility.
Senior Planner Diekmann stated that staff recognized that the allowances would not likely allow a homeowner to meet all of their energy needs by using one wind turbine.
- As drafted, it would not encourage wind energy conversion systems. He wondered, “If we had a greater implementation of wind energy resources in Fremont, what would that look like? Where would those things be?” Where in the city would be the best place “to have these things?”
Chairperson Bonaccorsi believed that the regulatory framework was being created “to see what happens.”
Associate Planner Ruhland agreed that was the hope.
- He understood that a wind turbine should be 30 to 40 feet above any obstacles within 300 to 330 feet, so a turbine that was 60 inches in diameter and was no higher than ten feet above the roofline would produce about one-fourth of a kilowatt. One website he had accessed promised a system that would produce 2.2 kilowatts, but that would be with wind at 40 mph. A year of 12 mph average wind would produce 500 kilowatts while the average home used 800 to 2,000 kilowatt hours per month. Consequently, it did not seem to be a very good idea for a wind turbine to be mounted on an occupied structure to begin with. Was the city prepared to entitle something that would be considered by many people to be visually unattractive for such a small and questionable benefit?
Senior Planner Diekmann asked where he would suggest the city should look to implement wind turbines.
The 60-foot tower would be a non-starter in much of the city. He suggested near the bay, maybe on larger lots near Coyote Hills where lots were larger with lower density. His conclusion was that even two wind turbine units per acre would not be appropriate, no matter the height. He could see endless complaints. He suggested that all portions of the city that would be incompatible with wind turbine use should be “X’d off” as allowable.
Was he suggesting that the allowances should be tailored to the more areas that were likely to be successful?

Chairperson Bonaccorsi expressed the opinion that **Commissioner Pentaleri** was thinking like an engineer, whereas, he was thinking from the perspective of an attorney, where a framework was set up to see what happened. However, people would not be making stupid economic decisions just because they want to do something renewable. If a system were in place, it would give those people an opportunity to try something, as dictated by the marketplace. The takeaway would be the CUP process, which would be the default. He asked that staff choose an appropriate time to report back to the Commission about how it was actually working in other cities. What were the unanticipated issues? What were the experiences of other jurisdictions? That information could provide a track record of what had happened and help to guide public policy, going forward. A red flag was where on the one-acre site the pole was mounted, which could cause strife from the neighbor.

Associate Planner Ruhland stated that those parameters for separation requirements were included, which were 15 feet or the turbine diameter setback from the property line.

Chairperson Bonaccorsi asked staff if they were aware of the five percent limitation on the use of solar on the public utility grid. It could also be an external economic restraint. He wondered if that standard applied to energy from wind turbines. Push-back could certainly be expected.

Associate Planner Ruhland stated that he was not familiar with that metering process. He did not believe an individual, onsite, private facility to power a home would meet with much opposition.

Chairperson Bonaccorsi disagreed.

Senior Planner Diekmann and **Chairperson Bonaccorsi** engaged in a discussion regarding net metering issues, which **Senior Planner Diekmann** said were beyond what staff had been dealing with and **Chairperson Bonaccorsi** believed it was important to have that information available to the public.

Commissioner Pentaleri stated that the premise in the staff report was that the ordinance should enable renewable energy. The threshold for wind energy would not enable the installation of wind turbines without a CUP. Some technical corrections should be made, along with proposing a “bigger picture context.” At the end of the day, why pass a renewable energy resource that was irrelevant, because the technical thresholds were immaterial to anything that was economically or technically feasible, at this time?

Chairperson Bonaccorsi supported the ordinance because the city had to start somewhere.

Chairperson Bonaccorsi opened and closed the Public Hearing.

Senior Planner Diemann stated, concerning **Commissioner Pentaleri**'s comments about the technical inadequacies of certain elements in the ordinance, that Council was handcuffed regarding higher towers being permitted. If the Commission was interested in staff investigating technical allowances that were greater than had been described in the staff report, that should be part of the motion. Otherwise, the motion would be as stated in the report.

Commissioner Pentaleri wondered why the rush for approval at this time.

Associate Planner Ruhland stated that the funding must be used by a certain date.

Senior Planner Diemann added that the deadline was Fall. The more funding used on this issue, the less would be available for other related greening of the zoning code issues.

Chairperson Bonaccorsi asked **Commissioner Pentaleri** to make an amendment to the motion.

Commissioner Pentaleri wished to make a motion that would be in an entirely different direction.

Chairperson Bonaccorsi asked **Commissioner Salwan** if he wished to withdraw his motion.

Commissioner Salwan stated that he did not wish to withdraw his motion, but he was amendable to considering changes to the technical analysis.

Senior Planner Diemann asked if he was willing to amend his own motion to allow staff to consider technical inadequacies of heights related to ground-mounted wind turbines. He suggested the motion would be to go to Council with a recommendation to reconsider the technical inadequacies.

Chairperson Bonaccorsi advised that the motion be acted upon and if it were defeated, **Commissioner Pentaleri** could offer his motion.

IT WAS MOVED (SALWAN/REED) AND CARRIED BY THE FOLLOWING VOTE (4-3-0-0) THE PLANNING COMMISSION – RECOMMENDED THAT THE CITY COUNCIL ADOPT THE NEGATIVE DECLARATION AND FIND THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FOUND THE ZONING TEXT AMENDMENT TO ADD A RENEWABLE ENERGY ORDINANCE AND OTHER RELATED AMENDMENTS TO THE FREMONT MUNICIPAL CODE ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S CONSERVATION ELEMENT AS ENUMERATED WITHIN THE STAFF REPORT;

AND
RECOMMENDED THAT CITY COUNCIL FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT BECAUSE THE CITY OF FREMONT RECOGNIZES THAT THE EFFICIENT USE OF RENEWABLE ENERGY SYSTEMS REDUCES ON-SITE CONSUMPTION OF UTILITY SUPPLIED ELECTRICITY, REDUCES DEPENDENCE ON NONRENEWABLE ENERGY SOURCES AND RESULTS IN AN OVERALL REDUCTION OF GREENHOUSE GAS EMISSIONS;

AND
RECOMMENDED THE CITY COUNCIL ADOPT THE ZONING TEXT AMENDMENT TO ADD A RENEWABLE ENERGY ORDINANCE TO THE FREMONT MUNICIPAL CODE, AS SHOWN ON EXHIBIT "A."

The motion carried by the following vote:

AYES: 4 – Chugh, Quan, Reed, Salwan
NOES: 3 – Bonaccorsi, Lorenz, Pentaleri
ABSTAIN: 0
ABSENT: 0
RECUSE: 0

DISCUSSION ITEMS

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Report on actions of City Council Regular Meeting

The South Fremont/Warm Springs EDA Grant studies were accepted and staff was directed to pursue a Community Plan that would include both residential and industrial development in that area.

Persimmon Parks alternative housing plan was approved at the beginning of February. It would include seven offsite, two-bedroom condos in lieu of onsite moderate units.

- Memo re: Residential Condominium Conversion Cap and Unit Allocation Tracking
- Memo re: St. Joseph's Surplus Property – 44411 Mission Boulevard

The next Planning Commission would take place on March 22, 2012.

Chairperson Bonaccorsi asked if the agenda could list the next Planning Commission meeting.

Senior Planner Diekmann suggested that Commissioners should always presume the scheduled meeting would occur. By time the meeting actually occurred, staff could be certain about the next meeting date.

The Draft EIR for the Downtown Community Plan had been completed, which was a supplement to the General Plan, so it was specifically looking at just the project issues of developing along Capital Avenue in the 100 acre Downtown Plan. The public Draft EIR review would end on April 2, 2012.

Each Commissioner had his own copy of the General Plan.

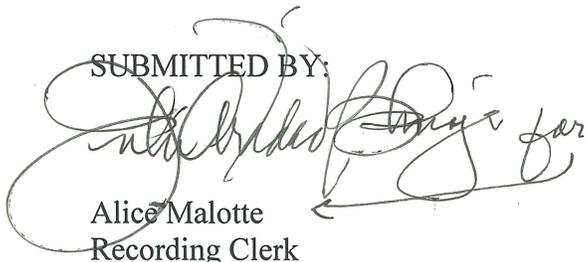
- Information from Commission: Commission members may report on matters of interest.

Chairperson Bonaccorsi announced that the Fremont Education Foundation would hold its tenth annual Excellence in Education Gala, which honor the Fremont firefighters, as well as Washington High School Administrator/Athletic Director Helen Perris this Saturday, February 25th. The theme was a safari theme.

He thanked Linda Wasserman for her touching thank you note for the flowers sent by the Planning Commission.

Meeting adjourned at 11:30 p.m.

SUBMITTED BY:



Alice Malotte
Recording Clerk

APPROVED BY:



Kelly Diekmann, Secretary
Planning Commission